HUMAN EVENTS

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News Section *Printed in Two Sections*

NEW YORK: *The Rockefeller blitz*.....(page 1)

APPEASEMENT: *Stassenism at work* (pages 1 & 3)

COURT: *Johnson torpedoes reform*.....(page 2)

MODERN GOP: *Showdown in Detroit*.....(page 3)

SPECIAL: *Watchdog of the House*.....(page 4)

Rockefeller: First reaction (which could be changed by sober second thoughts) of those matching up reports from the two conventions that took place in New York last week: Nelson Rockefeller should win the Governorship of the state by 250,000 votes. This estimate, stress HUMAN EVENTS correspondents covering the two conventions, reflects little credit on Rockefeller, although he received the GOP nomination by acclamation. Rather, they say, it can be attributed to two facts: (1) that the Democratic party almost ripped itself in half in the battle over the Senatorial nomination; and (2) that the public-relations specialists staging the Rockefeller blitz are proving themselves to be incomparable practitioners of the "hard sell."

In the struggle over the Democratic Senate bid, egghead forces from the Liberal party favored ADAer Thomas K. Finletter, former Secretary of Air under Truman. Favored by Harriman and New York Mayor Wagner was former AEC commissioner Thomas Murray, a political maverick now aligned with the far left.

Carmine de Sapio, boss of Tammany Hall, proved himself the master of New York Democrats, including both Wagner and Harriman, by pushing through his own candidate, New York County District Attorney Frank Hogan. This many-sided split in the Democratic ranks, plus such things as a failure on the part of the public address system and miserable attendance in the convention hall, rendered the Democratic convention an emphatic flop, and promised a difficult campaign for Harriman and Hogan.

By way of contrast, the Republican conclave went off with a clockwork precision reminiscent of the GOP Presidential convention of 1956. Observers attending the Rochester meeting roared when they read the benediction conferred on the rigged proceedings by *The New York Herald Tribune*—a Rockefeller mouthpiece. It was, the paper solemnly declared, "American democracy in motion," heeding "the voice of the rank-and-file voter."

Manifesting the shrewd care with which Rockefeller strategists planned their assault is the state ticket lined up with Rockefeller. His running mate for Lieutenant Governor, Malcolm Wilson, is high up in the Catholic Church in New York. The nominee for Attorney General is the incumbent, Louis Lefkowitz, a Jew. Finally, backstopping Rockefeller as strategist and adviser is the far left Anna Rosenberg, who will help Nelson line up segments of the ADA vote. It is said that, if it did not have its prior commitment to Harriman, New York's ADA-ing Liberal party would have been perfectly happy to have had Fair Dealer Rockefeller as its candidate.

The March of Appeasement: With Congress departing the Capital for the political wars, responsible observers fear that the United States will stand in danger of losing another, far more deadly, war—the struggle against communism. For, relieved of congressional scrutiny, the forces of "stassenism" within the Administration—already riding high amid the last days of legislative confusion—will go to work even harder to push the US into a policy of appeasement.

Those who fear such a development cite items like these, already in the tally:

● Hard on the heels of the resignation of AEC Chairman Lewis Strauss and of Edward Teller, Strauss' chief ally in holding the atomic agency on an anti-Communist course, the US announced its willingness to enter into an agreement to halt nuclear tests. This move represents a capitulation to the incessant hammering of Communist "fallout" propaganda of the last two years.

● The Administration is now sending arms to two regimes—Indonesia and Iraq—which are known to diplomatic row as pliant tools of the Kremlin. The shipment of arms to the Nasser-Moscow-oriented regime in Baghdad, say foreign observers, is of a piece with the current US policy in the Mideast, allowing UN boss Dag Hammarskjold to consign that whole region to Nasser's pro-Red dominance.

The word from informed sources scouting US policy: watch for a series of moves to sell out Lebanon to Nasser, scuttle King Hussein in Jordan.

● Finally, the United States, surrendering to pressures from Britain, agreed to reduce drastically the list of goods which US aid recipients are prohibited from trading with Communist countries. Among the goods removed from the embargo list are turboprop civilian airplanes, petroleum products, copper wire, motor vehicles, electric motors and generators—all of which can readily find their place in the Communist war machine.

This climaxes a long sellout initiated four years ago by Harold Stassen—whose image still hovers over the foreign policy of the Administration. (See "Trading With Reds" item, below.)

● Stassen, America's chief impresario of appeasement, has an important pipeline into the State Department—Under Secretary of State Christian Herter, whom Harold proposed as a Vice Presidential replacement for Nixon in 1956. Herter, say diplomatic observers, is more and more strengthening his control of the State Department.

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While Dulles tends to problems around the globe, Herter is quietly stacking the Department with operatives of his own choosing. These stassenites coalesce with State's many New and Fair Deal holdovers and work with them to undermine the strong anti-Communist stand taken by Dulles, their nominal chief.

High Court: Seldom has the Capital seen so cold-blooded a suppression of the popular will as in the tactics employed by Senate Majority Leader Lyndon Johnson in sidetracking several much-needed bills aimed at curbing the Supreme Court. The political columns in Washington have been agog with admiration for Johnson's "masterful" technique in throttling the legislation. What has not been told is the ruthlessness with which he achieved his results, or the help which he received in the recent battle from the resurgent Palace Guard.

Johnson's technique, say those who keep close watch on the Senate's day-to-day operations, is to sit down and figure out exactly how the votes line up. If he is seven votes down—as he was at one point in the recent fight—he selects a like number of Senators and goes after them with everything in his arsenal. Threats and promises of every variety are used without scruple. (For example, in last year's "civil rights" controversy, Johnson is said to have promised some Republican Senators that, in so far as he was able, he would see that they faced less vigorous opposition from the Democrats in the '58 elections, if they went along with the legislation as he wanted it.)

Even with his methods, however, Johnson could not have succeeded without White House help. For the victory of the pro-Supreme Court forces is in part the story of the return of Sherman Adams. Adams instructed Senator Everett Dirksen (R.-Ill.), who led the pro-Supreme Court forces within the GOP, to line up votes against the bill, intended to void the Court's decision in the *Nelson* case (see HUMAN EVENTS for August 25, 1958). Among those Dirksen sought to marshal among his backers was Senator Wallace Bennett (R.-Utah), a conservative and former president of the NAM. Bennett told Dirksen that he could not vote against the bill because he had backed it in the Judiciary Committee and had numbered himself among its supporters. Under pressure, however, Bennett agreed to stay out of the Chamber during the vote.

When the result came out 40-40, Dirksen rushed to Bennett, saying that unless he voted against the bill, breaking the tie, Vice President Nixon would be put on the spot. Bennett yielded, and hopes of halting the Court for this session went down the drain.

● *The bill to curb the Court, note those checking the vote tally, would have had "votes to spare" had not three Senators from below the Mason-Dixon line "betrayed the South." The three: Johnson and Yarborough of Texas, Kefauver of Tennessee.*

● Meanwhile, the Court's recent antics continue to give aid and comfort to the Reds. Joseph Z. Kornfeder, a former Communist, testified before the Senate Internal Security Subcommittee recently concerning the Court's June 16 pro-Red decisions involving the withholding of US passports. Kornfeder disclosed that while he was a member of the Communist party he had obtained passports by fraud to carry on conspiratorial duties. "For a long time," he stated, "the Communist International used the United States as a passport mill. This decision allows them to continue." Kornfeder further testified that the Soviet conspiracy required unfettered travel, and that American passports are treasured so highly by Communist agents that one of Stalin's secretaries once came to the US for the purpose of securing one.

Inflation: Increasing concern in the business and financial world continues to bear out the warnings conveyed in HUMAN EVENTS for August 11 and August 18, 1958—that the principal economic problem today is not the recession, but the gathering storm of inflation.

The realization is spreading that the recently closed 85th Congress was one of the most profligate in recent legislative history. Sober estimates as to the total spending authorized by this Congress (which encompasses supplemental appropriations for fiscal '58) lead to a round figure of about $90 billion—including "hidden" funds obligated by present legislation but requiring later appropriations.

The Tax Foundation, Inc., estimates that total expenditures for the current fiscal year will run in the neighborhood of $83 billion. The Foundation's executive director, Herbert J. Miller, disclosed that this spending figure is exceeded only by two years of World War II. "Increased expenditures for defense might have been expected," Miller said, "but it is non-defense costs that are soaring to record totals."

● Convincing evidence that the inflationary spiral is worrying responsible economists was the action taken recently by the Federal Reserve Banks of Dallas, Atlanta and Kansas City, raising the interest rate at which member banks could borrow funds. This followed closely on similar action by the Federal Reserve Bank of San Francisco. Still further tightening of the credit reins by Fed is expected.

Similarly, a recent poll of businessmen and economists, conducted by *The Wall Street Journal*, found widespread agreement on the fact that inflation is the chief economic menace facing the country today.

> **The Journal discovered that 90 per cent of the businessmen questioned, and 67 per cent of the economists, believed inflation to be more dangerous than the recession. "Inflation," said William E. Umstattd, president of the Timken Roller Bearing Co., "is a bigger danger than Russia, a bigger danger than recession, a bigger danger than anything this country has encountered in the last several years."**

"The majority of those interviewed," said the *Journal*, "blame the growing Federal deficit, and say the Government can do much to prevent inflation if it would cut spending and balance the Budget."

Vermont: The principal issue in the Vermont Senate primary battle between "liberal" GOP Congressman W. L. Prouty and Lee Earl Emerson, a conservative and former Governor, has become the Congressman's far left-wing voting record in Washington.

Prouty's record in the first session of the 85th Congress met with the emphatic approval of Americans for Democratic Action, which gave him a "plus" mark for eight out of nine votes on ADA-selected "key" issues. Prouty

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has sought to appease the native conservatism of Vermonters by denouncing ADA as a leftist organization. The opposition counters with the question: "If Prouty thinks so badly of ADA, how does it happen that, on the issues ADA selects as most indicative of one's political philosophy, Prouty voted pro-ADA eight out of nine times in 1957 and six out of seven times in 1956?"

Trading With Reds: The Administration's recent action freeing a large number of goods for trade with Communist nations is the climax of a long sellout of American interests, and a further example of Palace Guard defiance of the expressed will of Congress.

The whittling down of the list of embargoed goods has all been done in defiance of the Battle Act, passed by Congress in 1951, forbidding the extension of US aid to nations that wittingly send items of strategic importance to the Reds. Because our allies were flouting the embargoed list, and because the entrenched spending bureaucrats didn't want to decrease foreign aid, they began cutting back on the number of goods designated as "strategic."

Originally the list of embargoed commodities included 450 items. Before the recent cut, this number had been reduced to 282. Now it stands at 155—a total reduction of almost two-thirds in the number of commodities kept out of Red hands by US policy.

This calculated sellout was initiated by none other than Harold Stassen, when he was Battle Act administrator. The Senate's Permanent Subcommittee on Investigations surveyed the situation during the 84th Congress. These were their conclusions:

"The subcommittee believes the Executive branch of the Government has violated the spirit, if not also the letter, of [the Battle Act] since its enactment in 1951. It appears that in this matter the Executive branch has disregarded the clear intent of Congress.

" . . . Mr. Harold E. Stassen, as Battle Act administrator, in effect circumvented the Battle Act by determining that items of manifest strategic significance, and which had been so regarded prior to the 1954 revisions, were not strategic for the purposes of allied trade with the Communist bloc . . . " The report added that Stassen, in accounting to Congress for his conduct, had misrepresented the facts about what minerals and metals were getting into the hands of the Communists.

"Moreover," the report concluded, "when he testified before this subcommittee, Mr. Stassen appeared to be an arrogant, evasive and uncandid witness. This subcommittee feels that Mr. Stassen is to be severely criticized for his conduct in this matter."

Modern GOP: A spectacular victory for traditional Republicanism was scored recently in the 14th Congressional District of Michigan (Wayne County). For several years, a running battle has been taking place there between conservatives and "moderns" for control of the GOP machinery. Two years ago, a group of conservatives led by Richard C. Durant gained control of the organization, injecting new life into Republican campaigning against the Reuther-dominated Democrats (see HUMAN EVENTS for September 28, 1957).

In an all-out attempt to seize the reins of the organization, the "moderns" decided to run Fred M. Alger, Jr., a prominent Eisenhower Republican and former Ambassador to Belgium, for the position of chairman of the District organization. Durant—who had charged that the effect of "modern" GOP policies was to "make socialism respectable"—trounced his big-name opponent by a margin of 163 to 129.

Thus the biggest onslaught the "moderns" could mount was insufficient to thwart the conservatism of the GOP rank and file.

Labor Front: Revealing to analysts of trends within the two major parties was the breakdown on Senate votes concerning the two "labor reform" bills (S. 2888 and S. 3974) that were acted on during this session. The research organization, *Congressional Quarterly,* in a recent weekly report, analyzes 22 separate roll calls on these bills, according to whether the Senators voted for a "tough" bill, or a "soft" one.

Nine Senators, all Republicans, chalked up perfect records in favor of tougher legislation to curb the excesses of the bosses. They were: Bricker, Curtis, Hickenlooper, Jenner, Martin (Iowa), Martin (Pa.), Schoeppel, Williams, Goldwater.

No less than 31 "liberal" Democrats scored records of 100 per cent subservience to labor-boss dictation, voting without fail against restrictive measures to curb the labor oligarchy. They were: Gore, O'Mahoney, Chavez, Bible, Carroll, Church, Clark, Douglas, Ellender, Green, Hennings, Hill, Humphrey, Jackson, Johnson, Johnston, Kefauver, Kennedy, Kerr, Long, Magnuson, Mansfield, McNamara, Morse, Murray, Neuberger, Pastore, Proxmire, Sparkman, Symington, Yarborough.

Finally, three Republican Senators matched the "liberal" Democrats in going down the line for the bosses on every vote. They were: Javits, Ives and Langer.

Strange Coincidence Department: Cyrus Eaton, the left-wing industrialist who shocked the Nation this summer with an intemperate assault on the FBI, left for another visit to Russia, August 24. His companion on the plane from New York to Copenhagen: Russia's foreign minister, Andrei Gromyko.

"I had a long talk with him," said Eaton, "and his attitude to East-West cooperation seems to be very positive."

We the People (headquarters, 111 No. Wabash, Chicago 3, Ill.) will hold its Fourth Annual Constitution Day Convention, Saturday and Sunday, September 20 and 21, in the LaSalle Hotel, Chicago.

Knowland: Those who wish to contribute to Senator William F. Knowland's campaign for the Governorship of California may do so by sending funds to the "Knowland for Governor Campaign Committee," c/o Arthur F. Strehlow, Treasurer, 1361 High Street, Alameda, California.

STOKELY HAYS, Editor, "The Razorback," University of Arkansas: "HUMAN EVENTS has really proved to be a blessing for me this year. My private reading time has been greatly reduced and these papers have given me the opportunity to keep up with the problems of government, economy, labor and education."

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The Taxpayer's Friend

The Key Role of the House Rules Committee

By Emily Cuyler Hammond

ONE TORRID midsummer morning, when almost all Washington was slaving to wrap up the 85th Congress, Judge Howard W. Smith (D.-Va.), Chairman of the powerful, controversial Committee on Rules of the House of Representatives, was reported "missing." Immediately a dreadful howl went up from solons on the Hill who wanted to make political hay to assure their return to the Nation's Capital to serve and slave again.

Some half a dozen bills were tied up in the Rules Committee—including the Omnibus Housing bill, the Area Redevelopment bill, the Minerals Subsidy bill and the TVA Bond Revenue bill. The Housing bill alone—a $2 billion-plus bonanza—was just the sort of thing campaigning politicians like to hold out to their constituents as an example of "constructive" (read "pork barrel") achievement.

But where was Judge Smith? Could it be that he had met with foul play?

Veterans of the Hill wagged their heads and laughed at the thought. The Judge, a man of honor, responsibility, and the courage of his convictions, had "disappeared" more than once before when bills he believed were not for the good of all the people might, if granted a "rule," be rushed through at the end of a session without sufficient review or debate.

The Rules committee meets at the call of the chairman to decide which bills shall reach the floor of the House, and to fix the time allowed for debate. Only after seven days following the request of the majority of the committee can a meeting be held if the Chairman does not call it. If an important bill is in Rules without any action being taken for seven days, any Member of the House may file a "discharge petition," which must be signed by 218 members, to bring the bill to the floor. But this procedure is too cumbersome to be engaged in at the end of the session. The only other way a bill may reach the floor of the House is for the Speaker to bring it up under "suspension of the rules," which requires a two-thirds vote to pass.

Judge Smith was once more "playing 'possum." He disapproved of the bills awaiting his Committee's action for a variety of reasons. They would increase the public debt. They would increase Federal control over the states and/or over individuals. They contained a devious financial gimmick permitting the bypassing of the congressional appropriations committees.

Also, there were a considerable number of Congressmen who would have liked to see these bills killed but would have hated to vote against them in an election year. When taking an unpopular stand the Rules Committee is quite often obeying the unpublicized wishes of a majority of the House. The Rules Committee members usually come from "safe" districts, and so can take unpopular positions without risking their political necks.

After the Judge returned to Washington, the only important bill still on the Rules docket to make all the hurdles was Area Redevelopment, and that did so in a watered-down form. It is estimated that the cost of the bills which either were buried in Rules in the last days of the session or were held up and then beaten on the floor, with Chairman Smith and former Chairman Leo Allen (now ranking minority member) leading the attack, aggregated more than $5 billion.

Judge Smith's "disappearance" highlighted the Rules Committee in its present unsung function as the conscience of Congress and the taxpayer's friend. And it did more: It pointed up the significance of, and necessity for, the existence of the Rules Committee to checkmate temporary advantages of powerful pressure groups.

Thomas Jefferson, in his *Manual*, declared that, while "it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents," the only way in which a minority may find similar protection is by "the forms and rules of proceeding which have been adopted as they were found necessary, from time to time, and are become the law of the House."

The Committee on Rules, constituted as a select committee in 1789 and as a standing committee in 1880, has jurisdiction over "the rules, joint rules and order of business of the House, recesses and final adjournments of Congress." Specifically, it has jurisdiction over proposals to make or change the rules, the creation of committees and directing them to make investigations.*

THE COMMITTEE is often referred to as the "traffic cop" of the House because, working closely with the Speaker, it directs the orderly flow of legislation to the floor. Its real power lies, however, in its denial of "rules" to bills it disapproves, its selection of bills which will be heard and the "rules" granted, whether open to amendment or not, and the length of time allowed for debate.

In 1910, when "Uncle Joe" Cannon was both Speaker of the House and Chairman of Rules, his doubly concentrated power was successfully challenged by the progressives, and the Speaker was thenceforth barred from Rules membership. Nevertheless, had it not been for the Committee on Rules, the New Deal and the Fair Deal would have bent even further to the left.

By 1948 the long-smouldering revolt of New Dealers against Rules resulted in the passage of the 21-day rule, under which, if the Committee bottled up a bill for 21 days, the Chairman of the Committee reporting it out could bring it to the floor. The anti-poll tax law, as well as minimum wage and housing liberalizations, got through in this manner. This rule was soon repealed.

Today conservatives may thank the twelve-man Committee—eight Democrats and four Republicans—for saving the taxpayer some cash and preventing a degree of Federal infringement of states' rights. More important, they should be inspired by Judge Smith as a symbol of what can be accomplished by principled leadership against great odds.

* The Rules of the House of Representatives derive, first, from the Constitution of the United States; second, from the exercises of its constitutional power to make its own rules; third, from adaptations from *Jefferson's Manual*, compiled, 1797-1801, by Thomas Jefferson when he was Vice President and President of the Senate; and, fourth, from decisions made by the Speaker and the Chairman of the Committee of the Whole.

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Article Section *Printed in Two Sections*

The Conference of Chief Justices of the several states met recently in Pasadena, California. Presented for approval by the ranking jurists of America was a lengthy report analyzing some controversial decisions of the US Supreme Court, and criticizing the Court for its lack of "judicial self-restraint." Signing the report were ten state Chief Justices, seven of them from outside the South. The report was subsequently adopted by vote of the entire Conference, by the overwhelming margin of 36 to 8.* HUMAN EVENTS here presents excerpts from this unprecedented document, including discussion of some individual High Court decisions and the state justices' conclusions. Omissions from the text are indicated by asterisks (* * *).

To help right the balance of constitutional government, be sure to send copies of this history-making analysis to all the lawyers in your area, to your state officials and to members of your state legislature. (See coupon on page 4.)

STATE JUSTICES REBUKE HIGH COURT

Historic Document Analyzes Court's Leftward Trend

Following are excerpts from the "Report of the Committee on Federal-State Relationships as Affected by Judicial Decisions," adopted by the 1958 Conference of Chief Justices:

* * * It is a part of our obligation to seek to uphold respect for law. We do not believe that this goes so far as to impose upon us an obligation of silence when we find ourselves unable to agree with pronouncements of the Supreme Court (even though we are bound by them), or when we see trends in decisions of that Court which we think will lead to unfortunate results. We hope that the expression of our views may have some value. They pertain to matters which directly affect the work of our state courts. In this report we urge the desirability of self-restraint on the part of the Supreme Court in the exercise of the vast powers committed to it.

* * *

The difference between matters primarily local and matters primarily national was the guiding principle upon which the framers of our national Constitution acted in outlining the division of powers between the national and state governments.

* * *

The fundamental need for a system of distribution of powers between national and state governments was impressed sharply upon the framers of our Constitution not only because of their knowledge of the governmental systems of ancient Greece and Rome. They also were familiar with the government of England; they were even more aware of the colonial governments in the original states and the governments of those states after the Revolution. Included in government on this side of the Atlantic was the institution known as the New England town meeting, though it was not in use in all of the states. A town meeting could not be extended successfully to any large unit of population, which, for legislative action, must rely upon representative government.

But it is this spirit of self-government, of *local* self-government, which has been a vital force in shaping our democracy from its very inception.

* * *

The outstanding development in federal-state relations since the adoption of the national Constitution has been the expansion of the power of the national Government and the consequent contraction of the powers of the state governments. To a large extent this is wholly unavoidable and indeed is a necessity, primarily because of improved transportation and communication of all kinds and because of mass production. On the other hand our Constitution does envision federalism. The very name of our Nation indicates that it is to be composed of states. The Supreme Court of a bygone day said in *Texas* v. *White,* 7 Wall. 700,721 (1868): "The Constitution, in all its provisions, looks to an indestructible Union of indestructible states."

Second only to the increasing dominance of the national Government has been the development of the immense power of the Supreme Court in both state and national affairs. It is not merely the final arbiter of the law; it is the maker of policy in many major social and economic fields. It is not subject to the restraints to which a legislative body is subject. There are points at which it is difficult to delineate precisely the line which should circumscribe the judicial function and separate it from that of policy-making. * * *

BUT IF AND WHEN a court in construing and applying a constitutional provision or a statute becomes a policy maker, it may leave construction

* Voting in favor of the report were chief justices (or their representatives) from Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, Wyoming.
Voting against the report were chief justices (or their representatives) from California, New Jersey, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia and Hawaii. Nevada and North Dakota abstained. Arkansas, Connecticut and Indiana were not present for the vote.

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behind and exercise functions which are essentially legislative in character, whether they serve in practical effect as a constitutional amendment or as an amendment of a statute. It is here that we feel the greatest concern, and it is here that we think the greatest restraint is called for. There is nothing new in urging judicial self-restraint, though there may be, and we think there is, new need to urge it.

* * *

Many, if not most, of the problems of federalism today arise either in connection with the commerce clause and the vast extent to which its sweep has been carried by the Supreme Court, or they arise under the Fourteenth Amendment. Historically, cases involving the doctrine of pre-emption pertain mostly to the commerce clause. More recently the doctrine has been applied in other fields, notably in the case of *Commonwealth of Pennsylvania* v. *Nelson,* in which the Smith Act and other Federal statutes dealing with communism and loyalty problems were held to have pre-empted the field and to invalidate or suspend the Pennsylvania anti-subversive statute which sought to impose a penalty for conspiracy to overthrow the Government of the United States by force or violence. In that particular case it happens that the decision of the Supreme Court of Pennsylvania was affirmed. That fact, however, emphasizes rather than detracts from the wide sweep now given to the doctrine of pre-emption.

* * *

In the field of taxation the doctrine of intergovernmental immunity has been seriously curtailed partly by judicial decisions and partly by statute. * * * On the whole, the Supreme Court seems perhaps to have taken a more liberal view in recent years towards the validity of state taxation than it formerly took.

In many other fields, however, the Fourteenth Amendment has been invoked to cut down state action. This has been noticeably true in cases involving not only the Fourteenth Amendment but also the First Amendment guarantee of freedom of speech or the Fifth Amendment protection against self-incrimination. State anti-subversive acts have been practically eliminated by *Pennsylvania* v. *Nelson* in which the decision was rested on the ground of pre-emption of the field by the Federal statutes.

One manifestation of this restrictive action under the Fourteenth Amendment is to be found in *Sweezy* v. *New Hampshire,* 354 U. S. 234. In that case, the State of New Hampshire had enacted a subversive activity statute which imposed various disabilities on subversive persons and subversive organizations. In 1953 the legislature adopted a resolution under which it constituted the Attorney General a one-man legislative committee to investigate violations of that Act and to recommend additional legislation. Sweezy, described as a non-Communist Marxist, was summoned to testify at the investigation conducted by the Attorney General, pursuant to this authorization. He testified freely about many matters but refused to answer two types of questions: (1) inquiries concerning the activities of the Progressive Party in the state during the 1948 campaign, and (2) inquiries concerning a lecture Sweezy had delivered in 1954 to a class at the University of New Hampshire. He was adjudged in contempt by a state court for failure to answer these questions. The Supreme Court reversed the conviction, but there is no majority opinion.

* * *

THE CHIEF JUSTICE said in part: "The respective roles of the legislature and the investigator thus revealed are of considerable significance to the issue before us. It is eminently clear that the basic discretion of determining the direction of the legislative inquiry has been turned over to the investigative agency. The Attorney General has been given such a sweeping and uncertain mandate that it is his discretion which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. In this circumstance, it cannot be stated authoritatively that the legislature asked the Attorney General to gather the kind of facts comprised in the subjects upon which petitioner was interrogated."

* * *

In commenting on this case Professor Cramton [consultant to the committee of state chief justices] says: "The most puzzling aspect of the Sweezy case is the reliance by the Chief Justice on delegation-of-power conceptions. New Hampshire had determined that it wanted the information which Sweezy refused to give; to say that the State has not demonstrated that it wants the information seems so unreal as to be incredible. The State had delegated power to the Attorney General to determine the scope of inquiry within the general subject of subversive activities. Under these circumstances the conclusion of the Chief Justice that the vagueness of the resolution violates the due process clause must be, despite his protestations, a holding that a state legislature cannot delegate such a power."

* * *

Konigsberg v. *State Bar of California,* 353 U. S. 252, seems to us to reach the high water mark so far established by the Supreme Court in overthrowing the action of a state and in denying to a state the power to keep order in its own house.

* * *

The majority opinion * * * turned to the merits of Konigsberg's application for admission to the bar. Applicable state statutes required one seeking admission to show that he was a person of good moral character and that he did not advocate the overthrow of the national or state government by force or violence. The Committee of Bar Examiners, after holding several hearings on Konigsberg's application, notified him that his application was denied because he did not show that he met the above qualifications.

The Supreme Court made its own review of the facts.

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On the score of good moral character, the majority found that Konigsberg had sufficiently established it, that certain editorials written by him attacking this country's participation in the Korean War, the actions of political leaders, the influence of "big business" on American life, racial discrimination and the Supreme Court's decision in *Dennis* v. *United States,* 341 U. S. 494, would not support any rational inference of bad moral character, and that his refusal to answer questions "almost all" of which were described by the Court as having "concerned his political affiliations, editorials and beliefs" (353 U. S. 269) would not support such an inference either. * * *

The majority asserted that Konigsberg "was not denied admission to the California Bar simply because he refused to answer questions."

* * *

The majority, however, having reached the conclusion above stated, that Konigsberg had not been denied admission to the bar simply because he refused to answer questions, then proceeded to demolish a straw man by saying that there was nothing in the California statutes or decisions, or in the rules of the Bar Committee which had been called to the Court's attention, suggesting that a failure to answer questions "is, *ipso facto,* a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the Bar Examiners." Whether Konigsberg's "overwhelming" showing of his good character would have been shaken if he had answered the relevant questions which he refused to answer, we cannot say. We have long been under the impression that candor is required of members of the bar and, prior to *Konigsberg,* we should not have thought that there was any doubt that a candidate for admission to the bar should answer questions as to matters relating to his fitness for admission, and that his failure or refusal to answer such questions would warrant an inference unfavorable to the applicant or a finding that he had failed to meet the burden of proof of his moral fitness.

* * *

We believe that strong state and local governments are essential to the effective functioning of the American system of federal government; that they should not be sacrificed needlessly to leveling, and sometimes deadening, uniformity; and that in the interest of active, citizen participation in self-government—the foundation of our democracy—they should be sustained and strengthened.

* * *

WE ARE NOW concerned specifically with the effect of judicial decisions upon the relations between the Federal Government and the state governments. Here we think that the over-all tendency of decisions of the Supreme Court over the last 25 years or more has been to press the extension of Federal power and to press it rapidly. There have been, of course, and still are, very considerable differences within the Court on these matters, and there has been quite recently a growing recognition of the fact that our Government is still a Federal Government and that the historic line which experience seems to justify between matters primarily of national concern and matters primarily of local concern should not be hastily or lightly obliterated. A number of justices have repeatedly demonstrated their awareness of problems of federalism and their recognition that federalism is still a living part of our system of government.

The extent to which the Supreme Court assumes the function of policy-maker is also of concern to us in the conduct of our judicial business. We realize that in the course of American history the Supreme Court has frequently—one might, indeed, say customarily—exercised policy-making powers going far beyond those involved, say, in making a selection between competing rules of law.

We believe that in the fields with which we are concerned, and as to which we feel entitled to speak, the Supreme Court too often has tended to adopt the role of policy-maker without proper judicial restraint. We feel this is particularly the case in both of the great fields we have discussed —namely, the extent and extension of the Federal power, and the supervision of state action by the Supreme Court by virtue of the Fourteenth Amendment.

In the light of the immense power of the Supreme Court and its practical non-reviewability in most instances no more important obligation rests upon it, in our view, than that of careful moderation in the exercise of its policy-making role.

We are not alone in our view that the Court, in many cases arising under the Fourteenth Amendment, has assumed what seem to us primarily legislative powers. (See Judge Learned Hand on the Bill of Rights.)* We do not believe that either the framers of the original Constitution or the possibly somewhat less gifted draftsmen of the Fourteenth Amendment ever contemplated that the Supreme Court would, or should, have the almost unlimited policy-making powers which it now exercises. It is strange, indeed, to reflect that, under a Constitution which provides for a system of checks and balances and of distribution of power between national and state governments, one branch of one government—the Supreme Court—should attain the immense, and in many respects, dominant, power which it now wields.

We believe that the great principle of distribution of powers among the various branches of government and between levels of government has vitality today and is the crucial base of our democracy. We further believe that in construing and applying the Constitution and laws made in pursuance thereof, this principle of the division of power based upon

* "Hand states that the Court's transformation into a 'third legislative chamber' was 'a patent usurpation' of Governmental power. He cites the 1954 desegregation ruling as an example of such usurpation. In this decision, he states, the Court overruled legislative judgments by making 'its own reappraisal of the relative values at stake.' "—from HUMAN EVENTS for March 17, 1958.

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whether a matter is primarily of national or of local concern should not be lost sight of or ignored, especially in fields which bear upon the meaning of a constitutional or statutory provision, or the validity of state action presented for review. For, with due allowance for the changed conditions under which it may or must operate, the principle is as worthy of our consideration today as it was of the consideration of the great men who met in 1787 to establish our Nation as a Nation.

It has long been an American boast that we have a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will raise at least considerable doubt as to the validity of that boast. We find first that in constitutional cases unanimous decisions are comparative rarities and that multiple opinions, concurring or dissenting, are common occurrences. We find next that divisions in result on a 5 to 4 basis are quite frequent. We find further that on some occasions a majority of the Court cannot be mustered in support of any one opinion and that the result of a given case may come from the divergent views of individual Justices who happen to unite on one outcome or the other of the case before the Court.

We further find that the Court does not accord finality to its own determinations of constitutional questions, or, for that matter, of others. We concede that a slavish adherence to *stare decisis* could at times have unfortunate consequences; but it seems strange that under a constitutional doctrine which requires all others to recognize the Supreme Court's rulings on constitutional questions as binding adjudications of the meaning and application of the Constitution, the Court itself has so frequently overturned its own decisions thereon, after the lapse of periods varying from one year to 75, or even 95 years. (See the tables appended to Mr. Justice Douglas' address on *Stare Decisis,* 49 Columbia Law Review 735, 756-758.) The Constitution expressly sets up its own procedures for amendment, slow or cumbersome though they may be.

THESE FREQUENT differences and occasional overrulings of prior decisions in constitutional cases cause us grave concern as to whether individual views of the members of the Court as from time to time constituted, or of a majority thereof, as to what is wise or desirable do not unconsciously override a more dispassionate consideration of what is or is not constitutionally warranted. We believe that the latter is the correct approach, and we have no doubt that every member of the Supreme Court intends to adhere to that approach, and believes that he does so. It is our earnest hope, which we respectfully express, that that great Court exercise to the full its power of judicial self-restraint by adhering firmly to its tremendous, strictly judicial, powers and by eschewing, so far as possible, the exercise of essentially legislative powers when it is called upon to decide questions involving the validity of state action, whether it deems such action wise or unwise. The value of our system of federalism, and of local self government in local matters which it embodies, should be kept firmly in mind, as we believe it was by those who framed our Constitution.

At times the Supreme Court manifests, or seems to manifest, an impatience with the slow workings of our federal system. That impatience may extend to an unwillingness to wait for Congress to make clear its intention to exercise the powers conferred upon it under the Constitution, or the extent to which it undertakes to exercise them, and it may extend to the slow processes of amending the Constitution which that instrument provides. The words of Elihu Root on the opposite side of the problem, asserted at a time when demands were current for recall of judges and judicial decisions, bear repeating: "If the people of our country yield to impatience which would destroy the system that alone makes effective these great impersonal rules and preserves our constitutional government, rather than endure the temporary inconvenience of pursuing regulated methods of changing the law, we shall not be reforming. We shall not be making progress, but shall be exhibiting that lack of self-control which enables great bodies of men to abide the slow process of orderly government rather than to break down the barriers of order when they are struck by the impulse of the moment." (Quoted in 31 *Boston University Law Review* 43.)

We believe that what Mr. Root said is sound doctrine to be followed towards the Constitution, the Supreme Court and its interpretation of the Constitution. Surely, it is no less incumbent upon the Supreme Court, on its part, to be equally restrained and to be as sure as is humanly possible that it is adhering to the fundamentals of the Constitution with regard to the distribution of powers and the separation of powers, and with regard to the limitations of judicial power which are implicit in such separation and distribution, and that it is not merely giving effect to what it may deem desirable. * * *

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